

FILED

MAY 30 2014

DAVID CREWS CLERK
BY 
Deputy

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ESTHER ORRELL KRONE, AS REPRESENTATIVE
OF THE WRONGFUL DEATH BENEFICIARIES AND
AS EXECUTRIX OF THE ESTATE OF BETTY ORRELL
KRONE, DECEASED

PLAINTIFFS

VS.

CIVIL ACTION NO. 4:14-cv-00075-GHD-JMV

GRACE HEALTH & REHAB OF GRENADA, LLC AND
ARK MISSISSIPPI HOLDING COMPANY, LLC D/B/A
GRACE HEALTH & REHAB OF GRENADA AND
JOHN DOE OWNERS 1-10

DEFENDANTS

NOTICE OF REMOVAL

COME NOW defendants, Grace Health & Rehab of Grenada, LLC and Ark Mississippi Holding Company, LLC (erroneously named in plaintiffs' Complaint as "Ark Mississippi Holding Company, LLC D/B/A Grace Health & Rehab of Grenada") ("defendants"), by and through counsel, and file this, their Notice of Removal of this cause to the United States District Court for the Northern District of Mississippi, Greenville Division, and would show unto the Court the following:

I. JURISDICTION AND VENUE

1. Plaintiff, Esther Orrell Krone, as Executrix of the Estate of Betty Orrell Krone and on behalf of the wrongful death beneficiaries of Betty Orrell Krone ("plaintiffs") filed a civil action against defendants alleging medical malpractice.
2. Grace Health & Rehab of Grenada, LLC and Ark Mississippi Holding Company, LLC are foreign limited liability corporations organized under the laws of the State of Delaware

and whose sole members are corporations organized in Delaware with principal places of business located in the State of Tennessee.

3. Plaintiffs filed their Complaint in the Circuit Court of Grenada County, Mississippi, styled "Esther Orrell Krone, as Representative of the Wrongful Death Beneficiaries and Executrix of the Estate of Betty Orrell Krone, Deceased vs. Grace Health & Rehab of Grenada, LLC and Ark Mississippi Holding Company, LLC D/B/A Grace Health & Rehab of Grenada and John Doe Owners 1-10," Civil Action No. 2014-158CVL.

4. Plaintiffs served their Complaint upon Grace Health & Rehab of Grenada, LLC and Ark Mississippi Holding Company, LLC on or about May 6, 2014; therefore, pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446(b), this Notice of Removal is timely filed within the thirty (30) days of receipt of service of process.

5. The United States District Court for the Northern District of Mississippi, Greenville Division, is the district and division embracing the place where the aforementioned action was filed.

II. DIVERSITY OF CITIZENSHIP AND AMOUNT IN CONTROVERSY

A. PARTIES

6. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 in that complete diversity exists between the properly named parties herein and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

7. Plaintiffs' representative is a resident citizen of the State of Mississippi. *Plaintiffs' Complaint, ¶ 2, Ex. "A".*

8. Defendant, Grace Health & Rehab of Grenada, LLC, is a foreign limited liability company organized under the laws of the State of Delaware, whose sole member, through

various layers, is a corporation organized in Delaware whose principal place of business is located in the State of Tennessee.

9. Defendant, Ark Mississippi Holding Company, LLC, is a foreign limited liability company organized under the laws of the State of Delaware, whose sole member, through various layers, is a corporation organized in Delaware whose principal place of business is located in the State of Tennessee.

10. Plaintiffs erroneously named “Ark Mississippi Holding Company, LLC D/B/A Grace Health & Rehab of Grenada”. However, this is a misnomer, as there is no such entity. Assuming, for the sake of argument, the fictitious business name “D/B/A/ Grace Health & Rehab of Grenada” attaches to Ark Mississippi Holding Company, LLC, Ark Mississippi Holding Company, LLC, is a foreign limited liability company organized under the laws of the State of Delaware, whose sole member, through various layers, is a corporation organized in Delaware whose principal place of business is located in the State of Tennessee. Thus, the parties nevertheless remain completely diverse for diversity of citizenship determination.

11. The remaining defendants, “John Doe Owners 1-10” are unidentified and have no legal presence for the purposes of diversity of citizenship jurisdiction. The defendants are not legally or properly named and must be disregarded for purposes of determining diversity of citizenship jurisdiction pursuant to 28 U.S.C. § 1441.

B. AMOUNT IN CONTROVERSY

12. While denying that plaintiffs are entitled to any sum or relief of, from or against defendants, the amount in controversy in this civil action exceeds \$75,000.00, exclusive of interest and costs, as evidenced by plaintiffs’ Complaint for wrongful death seeking an award of compensatory and punitive damages.

13. Pursuant to 28 U.S.C. § 1332, this Court has original jurisdiction since it is a civil matter, the amount in controversy is in excess of \$75,000.00 and the properly joined parties are of diverse citizenship.

III. CONCLUSION

14. Defendants hereby give written notice of the filing of this Notice of Removal to plaintiffs, and a true and correct copy of this Notice is being filed with the Clerk of the Circuit Court of Grenada County, Mississippi, as required by 28 U.S.C. § 1446(d).

15. In further support of this Notice, defendants attach a copy of any/all pleadings served upon them in this action as follows:

Exhibit "A": Plaintiffs' Complaint

16. Pursuant to L.U.Civ.R. 5(b), defendants will electronically file a complete copy of the state court record within fourteen (14) days from the date of removal.

WHEREFORE, Grace Health & Rehab of Grenada, LLC and Ark Mississippi Holding Company, LLC (erroneously named in plaintiffs' Complaint as "Ark Mississippi Holding Company, LLC D/B/A Grace Health & Rehab of Grenada"), respectfully remove this action from the Circuit Court of Grenada County, Mississippi, pursuant to 28 U.S.C. § 1441.

THIS the 29th day of May, 2014.

Respectfully submitted,

GRACE HEALTH & REHAB OF GRENADA, LLC AND
ARK MISSISSIPPI HOLDING COMPANY, LLC
(ERRONEOUSLY NAMED AS "ARK MISSISSIPPI
HOLDING COMPANY, LLC D/B/A GRACE HEALTH
& REHAB OF GRENADA"), DEFENDANTS

BY: /s/ Eugene R. Naylor
EUGENE R. NAYLOR (MSB #3757)
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CERTIFICATE OF SERVICE

I, Eugene R. Naylor, one of the attorneys of record for Defendants, do hereby certify that I have this day caused to be mailed via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Notice of Removal to the following:

George F. Hollowell, Esq.
Post Office Drawer 1407
Greenville, Mississippi 38702-1407
ATTORNEY FOR PLAINTIFFS

Linda M. Barnette
Grenada County Circuit Clerk
Post Office Box 1517
Grenada, Mississippi 38902-1517

THIS the 29th day of May, 2014.

/s/ Eugene R. Naylor
EUGENE R. NAYLOR